

INCOME TAX APPELLATE TRIBUNAL
DELHI BENCH "A": NEW DELHI
BEFORE SHRI SUDHANSHU SRIVASTAVA, JUDICIAL MEMBER
AND
SHRI PRASHANT MAHARISHI, ACCOUNTANT MEMBER
(Through Video Conferencing)

ITA No. 1509/Del/2015
(Assessment Year: 2009-10)

Ved Parkash Bharti, S/o. Shri Parmanand, H. No. 1049-50, Sector-13-17, HUDA, Panipat PAN: AAVPB5477D	Vs.	ACIT, Central Circle, Karnal
(Appellant)		(Respondent)

Assessee by :	Shri Amit Goel, CA Shri Nippun Mittal, CA
Revenue by:	Shri Sanjay Tripathi, Sr. DR
Date of Hearing	11/11/2020
Date of pronouncement	25/11/2020

O R D E R

PER PRASHANT MAHARISHI, A. M.

1. This appeal is filed by the assessee against the order of the Id CIT(A)-3, Gurgaon dated 05.01.2015 for the Assessment Year 2009-10, wherein penalty u/s 271(1)(c) of the Act levied by the Assistant Commissioner of Income Tax, Central Circle, Karnal amounting to Rs. 2860160/- vide order dated 30.09.2013 u/s 271(1)(c) of the Act is confirmed.
2. The assessee has raised the following grounds of appeal:-
 - "1) *The search & seizure operation was conducted on Ved Bharti Group of case on 8-4-2010 & 9-4-2010. During the-" search operation a pen drive was found & seized from the vehicle no. HR06N0063 parked in front of Residence of assessee. The vehicle was in the name of Company in which Assessee is one of the director. In the per drive transaction of Rs. 5,43,71,946/- were there for which assessee explained 4,54,54,816/- transactions and the balance amount of Rs. 89,17,140/- remained unexplained and addition were made in the returned income.*
 - 2) *During search operation the assessee surrendered Rs. 8 Crore as per statement under section 132(4) dated 8-4- 2014 & 9-4-2014.*

- 3) *The assessee had declared 6.04 Crore in the returns of income filed for AY 2011-12 filed u/s 153A(1).*
- 4) *To fulfill the commitment made regarding surrender as per statement under section 234 the A.O made addition of Rs. 110 Lacs for A.Y. 2011-12 and 89,17,140 in A.Y. 2009-10. The assessee duly accepted the addition made by the Assessing Officer as he has already surrendered the amount in statement given u/s 132(4).*
- 5) *The assessee did not prefer any appeal since he wanted peace of mind & wanted to avoid any litigation.*
- 6) *During Assessment proceeding the assessee furnished that he had agreed for addition of Rs. 89,17,140/- since it was declared in the statement given u/s 132(4) in which he surrendered the income.*
- 7) *The A.O. levied penalty u/s 271(1)© since the A.O. believed that the assessee has not explained the entries of Rs. 89,17,140/-.*
- 8) *Further in appeal before Commissioner of Income Tax Appeal-3, Gurgaon. The assessee gave the reply in which he relied upon the case law of Prem Arora vs. Deputy Commissioner of Income Tax (2012) 78DTR (Delhi) Tribunal in which the ITAT deleted the additions in which the assessee has disclosed the surrender amount in returned income u/s 153(A) and deleted the penalty u/s 271(l)(c)."*

3. Brief facts of the case shows that there was a search on the assessee on 08-9.04.2010. Consequent to that assessee who is deriving income from salary, business and other sources was issued notice u/s 153A on 10.02.2011. In response assessee submitted that original return filed may be treated as return u/s 153A. In the return of income the assessee declared regular income of Rs. 222131/- and agricultural income of Rs. 88200/-. Assessment u/s 153A was passed wherein, addition of Rs. 8917140/- was made with respect to surrendered income and deficit therein. Assessment order u/s 153A was passed on 25.03.2013 determining total taxable income of Rs. 9139271/-. During the course of assessment proceedings the Id AO initiated penalty proceedings stating that assessee is liable for penalty u/s 271(1)(c) of the Act for concealing and furnishing inaccurate particulars of his income.
4. The assessee did not prefer any further appeal.
5. Therefore, the Id AO initiated penalty proceedings. In response to the penalty proceedings the assessee submitted that assessee has accepted this addition and explained the entries of the disclosures. No documentary evidence etc are found during search. Assessee also stated

that it has accepted the addition to buy peace and to avoid further litigation. The Id AO rejected the contentions of the assessee stating that assessee has concealed income of Rs. 8917140/- and levied a penalty of Rs. 2860160/- by the order dated 30.09.2013.

6. The assessee preferred appeal before the Id CIT(A) who confirmed the same and therefore, assessee is in appeal before us.
7. At the time of hearing the assessee submitted a paper book wherein, at page No. 19 he referred to the application for admission of additional ground of appeal stating that no satisfaction has been recorded by the Id AO in the assessment order and therefore penalty orders are liable to be cancelled. He also raised the second ground that the notice u/s 274 issued in this case is defective and contrary to the provision of law and therefore penalty u/s 271(1)(c) of the Act is liable to be cancelled. He submitted that the additional ground raised by the assessee are though covered in ground No. 1 of the appeal of the assessee, however, they bring out the specific reason for raising the above ground. He submitted that these grounds are purely legal in nature and goes to the root of the matter and therefore, should be admitted.
8. The Id DR vehemently objected to the admission of the additional ground and stated that same were never raised before the lower authorities.
9. We have carefully considered the rival contentions and find that additional ground raised by the assessee goes to the root of the matter of levy of penalty as it challenges the validity of the penalty itself. These are legal ground, does not require any further investigation of the fact and hence same are admitted.
10. On the additional ground we have heard rival contentions and find that in the assessment order itself the Id AO at the time of making the assessment order did not specify any one limb of the reason for levy of penalty. In the assessment order he initiated the penalty proceedings stating that assessee is liable for penalty u/s 271(1)(c) of the Act for concealing and furnishing inaccurate particulars of income. In the show cause notice issued u/s 274 of the Act read with section 271(1)(c) of the Act dated 25.03.2013 he has not struck off any of the twin charges. At

the time of passing the penalty order the Id AO has levied the penalty for concealment of the income. The Id AR has relied upon the decision of the Hon'ble Delhi High Court in Pr. CIT Vs. Sahara India Life insurance Company Ltd 2019 (8) TMI-409. The Hon'ble Delhi High Court in the above decision relying upon the decision of the Hon'ble Karnataka High Court in case of CIT Vs. Manjunatha Cotton and Ginning Factory and CIT Vs. SSA's Emerald Meadows has held in para NO. 21 that the notice issued by the Id AO for levy of the penalty would be bad in law if it did not specify which limb of section 271(1)(c) the penalty proceedings have been initiated. In the present case the notice issued by the Id AO section 271(1)(c) is silent. Even otherwise in the assessment order passed the Id AO was not clear whether the penalty was leviable for concealment of income or for furnishing inaccurate particulars of income. Thus, it was not discernable clearly in which limb the assessee was to be penalized. The Hon'ble Delhi High Court in 171 Taxmann 156 in Virgo Marketing Pvt. Ltd has held that if one is unable to discern from the reading of the assessment order why the Id AO choose to initiate penalty proceedings against the assessee and under which limb the penalty proceedings cannot be upheld. In view of the above facts and the binding judicial precedents of the Hon'ble High Court we set aside the orders of the lower authorities and direct the Id AO to delete the penalty u/s 271(1)(c) of the Act of Rs. 2860160/-.

11. Accordingly, the appeal filed by the assessee in ITA No. 1509/Del/2015 is allowed.

Order pronounced in the open court on 25/11/2020.

Sd/-
(SUDHANSHU SRIVASTAVA)
JUDICIAL MEMBER

Sd/-
(PRASHANT MAHARISHI)
ACCOUNTANT MEMBER

Dated : 25/11/2020
A K Keot

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1. Applicant
2. Respondent

3. CIT
4. CIT (A)
5. DR:ITAT

ASSISTANT REGISTRAR
ITAT, New Delhi

Date of dictation	25.11.2020
Date on which the typed draft is placed before the dictating member	25.11.2020
Date on which the typed draft is placed before the other member	25.11.2020
Date on which the approved draft comes to the Sr. PS/ PS	25.11.2020
Date on which the fair order is placed before the dictating member for pronouncement	25.11.2020
Date on which the fair order comes back to the Sr. PS/ PS	25.11.2020
Date on which the final order is uploaded on the website of ITAT	25.11.2020
date on which the file goes to the Bench Clerk	25.11.2020
Date on which the file goes to the Head Clerk	
The date on which the file goes to the Assistant Registrar for signature on the order	
Date of dispatch of the order	